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April 25, 2011

VIA E-FILING

Ms. Jocelyn Boyd
Chief Clerk of the Commission
SC Public Service Commission
P. O. Drawer 11649
Columbia, SC 29211

RE: South Carolina Electric & Gas Company – Petition of South Carolina Electric & Gas Company for Updates and Revisions to Schedules Related to the Construction of a Nuclear Base Loan Generation Facility at Jenkinsville, South Carolina
Docket No. 2010-376-E


Dear Ms. Boyd:

Enclosed please find the **Memorandum** filed on behalf of South Carolina Energy Users Committee in the above referenced docket. By copy of this letter, I am serving all parties of record.

If you have any questions or if I may provide you with any additional information, please do not hesitate to contact me.

Sincerely,

ELLIOTT & ELLIOTT, P.A.



Scott Elliott

SE/jcl

Enclosures

cc: All parties of record (w/encl.)

STATE OF SOUTH CAROLINA
BEFORE THE PUBLIC SERVICE COMMISSION
DOCKET NO. 2010-376-E

IN THE MATTER OF:)
)
Petition of South Carolina Electric & Gas)
Company for Updates and Revisions to)
Schedules Related to the Construction of a)
Nuclear Base Load Generation Facility at)
Jenkinsville, South Carolina)

MEMORANDUM

South Carolina Electric & Gas ("SCE&G") has petitioned the South Carolina Public Service Commission ("Commission") for an order modifying its Base Load Review Order 2009-104(A) ("Base Load Review Order") for the construction of two nuclear generating units to be located at the VC Summer Nuclear Station site in Jenkinsville, South Carolina. For the reasons hereinafter set out, the South Carolina Energy Users Committee ("SCEUC") respectfully submits that the Commission should deny SCE&G's petition in part.

STATEMENT OF FACTS

SCE&G has petitioned the Commission to modify its Base Load Review as follows:

- (a) To eliminate \$438 Million in contingency costs as ordered by the South Carolina Supreme Court in South Carolina Energy Users Committee v. South Carolina Public Service Commission 388 S.C. 486, 697 S.E. 2d 587 (2010).
- (b) To add \$174 million in capital costs for construction of the nuclear generating units. These costs either have been incurred to date or are anticipated to be incurred before completion of the project in 2019.
- (c) To update its capital cost schedule.

Petition at Page 6, Paragraph 19.

Contingency Costs. Pursuant to the Supreme Court opinion in South Carolina Energy Users Committee v. South Carolina Public Service Commission, *supra*, SCE&G proposes to remove \$438 million in contingency funds from its approved capital cost schedules. In addition, SCE&G proposes to remove \$216,882,000 in inflation of its contingency costs from its Base Load Review Order (Walker pre-filed Testimony at page 6). Together the contingency costs and inflation total \$654,882,000. SCE&G is merely following the order of the South Carolina Supreme Court in South Carolina Energy Users Committee v. South Carolina Public Service Commission.

Change Orders. SCE&G proposes to modify its Base Load Review Order by adding \$11,510,470 in changes orders (Exhibit SAB-2). Approximately \$10 million of these change orders is associated with the cost to SCE&G of moving approximately \$315 million in project costs associated with eleven scopes of work in the EPC contract from the target price category to fixed/firm pricing. The advantage of this change order is to reduce the risk of increased costs from SCE&G (and its rate payers) and to shift the risk to its contractor Westinghouse (Byrne pre-filed Testimony at page 30, lines 1-13; Walker pre-filed Testimony at page 10, lines 3-15).

SCE&G's Owners Costs. SCE&G proposes to modify its Base Load Review Order to include as capital costs of an additional \$145 million in owner's costs (Walker pre-filed Testimony Chart C, page 29). SCE&G proposes, *inter alia*, additional costs for training, workers compensation insurance, licensing, general administrative costs.

In support of its Base Load Review Order Application, SCE&G presented evidence that its owner's costs would total \$286 Million (Walker's pre-filed testimony, Chart C, page 29). To enable it to determine its owner's costs for the purpose of its Base Load Review Application, SCE&G had the benefit of its experience building and operating Unit 1 in Jenkinsville.

Westinghouse designed both Unit 1 as well as the AP 1000 units under construction. SCE&G had the benefit of the experience and advice of Westinghouse and its contractor Shaw in determining its anticipated capital costs of this project. In addition, SCE&G had the benefit of the experience and advice of both GE and Areva whose nuclear generating plants SCE&G also considered for its Jenkinsville site. SCE&G had the benefit of the experience and advice from Bechtel, a large construction firm, to enable it to determine its anticipated capital costs, including its licensing costs. Westinghouse is building AP1000 units in China and SCE&G had the benefit of inspecting the units in China to enable it to determine its capital costs under the Base Load Review Act. Duke, Progress and Southern Company are either building or considering the AP 1000 units. SCE&G had the benefit of consulting these utilities for an analysis of the owners' costs necessary for the construction of the nuclear generating units; (Tr., page 159, l. 7 – page 165, l. 18). Mr. Byrne assured the Commission in Docket No. 2008-196-E that its anticipated owner's costs were "...a reasonable projection of the owners' costs that can be expected for this project. The underlying cost projections are based on the same budgeting and cost project practices that the company has used for years in operating its utility systems and in preparing capital budgets in the ordinary course of its operations. The company has extensive experience in the use of these budgeting techniques, and they have been applied and refined in major construction projects it has undertaken in the past."(Tr. Page 168, l.18 –page 169, l. 13).

Mr. Byrne now acknowledges that the owners' costs SCE&G submitted to the Commission in its Base Load Review Application in 2008 were not based on detailed item by item budgets. Rather, SCE&G's proposed owners' costs were "high-level estimates." Because SCE&G was negotiating its EPC contract with Westinghouse in 2006-2008, SCE&G determined that it was unreasonable and impractical to submit a capital cost schedule to the Commission in

Docket No. 2008-196-E for owners' costs based on a specific budget process for these costs. (Tr., page 175, l.12- page 176, l. 10).

Ms. Walker testified that SCE&G's owners' costs could not be accurately forecast until Westinghouse completed its site specific construction schedule (Tr. Page 289, ll. 6-16). However, Ms. Walker testified at the hearing in Docket No. 2009-293-E opened to consider SCE&G's request to revise its construction schedules that the schedule changes were timing related changes only and would not affect the cost of the project in 2007 dollars (Tr. Page 291, ll. 6-12). Based on Ms. Walker's testimony, the Commission found that the site specific changes requested by SCE&G did not alter the cost of the project (Order No. 2010-12 at page 16). Ms. Walker testified that at the time SCE&G filed its application for its Base Load Review Order in May of 2008, SCE&G had only made an estimate of owners' costs (Tr. page 295, l. 21 – page 296, l. 8). Ms. Walker's justification for submitting a capital cost estimate instead of the actual owners' costs anticipated to be incurred in the construction of the project was that it was impractical for SCE&G to canvass across all of the different areas of SCANA to ascertain its costs prior to filing its Base Load Review Application. The requirement that a utility determine its anticipated actual owners' costs before filing for a Base Load Review Order, would "put the cart before the horse" (Tr. Page 297, ll. 6 – 15).

With respect to the increase in owners' costs requested in this docket, SCE&G proposes \$64 million in training costs in addition to that which this Commission approved in SCE&G's Base Load Review Order. Ms. Walker testified that costs of recruiting, hiring, training and employing personnel at their nuclear generating facilities will be costly, and costlier than that approved in 2009 (Walker Pre-filed Testimony, page 31, lines 1-11). Mr. Byrne testified that it

came as no surprise to SCE&G that its training costs would be substantial (Byrne Pre-filed Testimony, page 149, lines 14-17).

The utility also seeks an increase of \$11.3 million in its approved capital costs for the construction of a training facility on site. In its Base Load Review Application in 2008, SCE&G based its costs of constructing its training facility on actual design documents. However, SCE&G costs estimates proved to be unreliable and they are now requesting an additional \$11.3 million. (Walker Pre-filed testimony page 36, lines 3-22). SCE&G fails to elaborate on this cost overrun.

While SCE&G included workers compensation insurance in its capital costs approved by Base Load Review Order, it failed to include personnel cost of administering the program. (Walker Pre-filed Testimony at page 32, line 11 through page 33, line 4). It is undisputed that insurance programs must be staffed; SCE&G fails to explain this oversight.

SCE&G acknowledges that it has underestimated its costs with respect to licensing of its nuclear generating plants and now seeks to increase its licensing costs by \$14.7 million above the amount which it had requested the Commission to authorize in its Base Load Review Order. In support of request for authority increased costs for licensing, Ms. Walker points to the novelty of the AP 1000 design in support of SCE&G's request (Walker Pre-filed testimony page 34, lines 3-16). However, it is undisputed that the AP-1000 units under construction in Jenkinsville are among the first to be built in the United States. The AP-1000 units were under review by NRC prior to SCE&G's Base Load Review Application and remain under review by the NRC. In addition, the NRC has yet to grant SCE&G a COL for the units. SCE&G filed its Base Load Review Application without having the COL in hand but represented to the Commission that the COL would be issued by July 2011. SCE&G now advises the Commission in this docket that the

COL will not likely be issued before 2012. Mr. Byrne further testified that he anticipated no impact on SCE&G's regulatory licensing arising from the earthquake and tsunami in Japan (Tr. Page 133, l. 8 – page 135, l. 9).

SCE&G requests a \$52.7 million increase in the capital costs approved in its Base Load Review Order for general and administrative costs. These costs were intended to serve as an overhead component for services such as information technology and human resources. In its Base Load Review Application in 2008, SCE&G estimated its general and administrative owner's costs based on a percentage of certain other vague, unidentified owners' costs for the project. This estimated percentage of owner's costs has proved to be unreliable and SCE&G now requests an additional \$53 million in these costs. (Walker Pre-filed testimony page 35, lines 3-20)

Transmission Switch Yard Redesign. SCE&G proposes to add \$13 million in capital costs to its Base Load Review Order to redesign its switch yard at the Jenkinsville site. Since the issuance of its Base Load Review Order, SCE&G has redesigned the plans for construction to be performed in its Unit 1 switchyard to accommodate placing power from Units 2 and 3 onto the grid. The switch yard for Unit 1 has not changed since the Commission issued its Base Load Review Order in 2009 (Byrne Pre-filed testimony page 40, line 6 through page 41, line 9; Tr., page 159, ll. 2-6)

ARGUMENT

Contingency Costs. SCE&G's request to remove \$438 million in contingency costs together with the attendant contingency inflation costs from the Base Load Review Order is appropriate in light of the Supreme Court decision in South Carolina Energy Users Committee vs. South Carolina Public Service Commission, *supra*. The South Carolina Energy Users

Committee joins in SCE&G's request to eliminate these contingency costs from its Base Load Review Order.

Change Orders. SCEUC has no objection to including costs of the change orders set out in SCE&G Exhibit SAB-2 in SCE&G's Base Load Review Order.

Owner's Costs. SCE&G's request to add \$145 million in owner's costs to its Base Load Review Order should be denied. These costs are the result of imprudence on the part of SCE&G. Accordingly, these additional costs should not be included as capital costs in SCE&G's Base Load Review Order. However, in light of the fact that SCE&G now represents that these additional costs are necessary to the construction of its nuclear generating facilities, SCE&G should be ordered to incur all of these costs as a necessary to construction its nuclear generating plants without placing the costs in rates.

The Base Load Review Act provides that so long as nuclear generating plant is constructed in accordance with the approved schedules, estimates and projections set out in §58-33-270 (B)(1) and §58-33-270(B)(2), as adjusted by authorized inflation, a utility must be allowed to recover its capital costs related to the plant. §58-33-275(C) The Base Load Review Act provides that as circumstances warrant, a utility may petition the Commission for an order modifying its schedules in its Base Load Review Order. However, the proposed changes may not be the result of impudence on the part the utility. §§58-33-270(E), 58-33-275(E). As the record clearly reflects, SCE&G's proposed additional owners' costs are the result of the failure by SCE&G to anticipate or avoid the additional costs and are therefore imprudent.

The Base Load Review Act places the burden on SCE&G to establish its anticipated construction costs at the time of its filing of its Base Load Review Application. §58-33-250(2). The Base Load Review Act provides that once SCE&G establishes its capital costs in its Base

Load Review Order, it may recover those capital costs through revised rates. The Base Load Review Act reduces the risk to the utility of recovery of its capital costs by requiring the utility's rate payers to pay certain of those costs while the nuclear plant is being constructed and before it is being operated to generate electricity. However, only prudent costs may be placed in rates. Because SCE&G could have identified the owners' costs requested in this docket at the time of its Base Load Review Application, these costs should be should disallowed as imprudent. §§58-33-270 (E), 58-33-275(E).

SCE&G witnesses now acknowledge that the owners' costs submitted to the Commission the 2008 Base Load Review Application were only estimates. In fact SCE&G estimated certain of the owners' costs presented to the Commission in Docket No. 2008-196-E were based upon estimated percentages of other vague, unidentified costs of the project.

Mr. Byrne testified that SCE&G's estimates in 2008 were reasonable under the circumstances as required by the Base Load Review Act (Pre-filed testimony Page 42, ll. 4-15). However, SCE&G was fully equipped to identify and calculate its owners' costs in 2008, had it taken the opportunity to do so. SCE&G had the benefit not only of its own experience in building and operating a nuclear generating plant but also of the direction and advice of Westinghouse (both in China and the United States), Shaw, GE, Areva, Bechtel, Duke, Progress, Southern Company and other interested parties to inform SCE&G of the owners' costs that must be anticipated for the purposes of the Base Load Review Act. SCE&G's preoccupation with negotiating its EPC contract does not excuse it from satisfying the requirement of the Base Load Review Act that it establish its capital costs, including owners' costs. Section 58-33-250(2).

SCE&G would have the Commission believe that the novelty of the project excuses SCE&G from complying with Section 58-33-250(2). However, SCE&G assured the

Commission in Docket No. 2008-196-E that SCE&G's long experience in budgeting for large, complex construction projects enabled it to budget with reasonable certainty.

The material facts have not changed. The AP1000 units are still novel. The units have not been accepted by NRC. The project will still take many years to complete. However, the Base Load Review Act was enacted in light of these facts. Had the General Assembly intended to authorize the Commission to establish capital cost *estimates*, it could have plainly stated so in the Base Load Review Act. Instead, the Base Load Review Act required SCE&G to establish these owners' capital costs with certainty.

In addition, the transmission switchyard design could have been anticipated at the time of the proceedings in Docket No. 2008-196-E. The switchyard for Unit 1 has not changed. Nor have any other circumstances affecting the transmission and switchyard changed.

The risk to SCE&G's rate payers of allowing imprudent costs in rates could not be better demonstrated than in this proceeding. When SCE&G applied for its base load review order in 2008, SCE&G had not been issued its COL from the NRC. SCE&G anticipated receiving its COL from the NRC in July 2011. SCE&G now advises that it does not anticipate receiving its COL until 2012 (Tr. page 133, ll. 8-20). The delay is of concern to SCE&G and therefore it has insisted that Westinghouse conduct a study at a cost to the ratepayers of \$412,500 to determine the impact of the delay issuance of the COL for SCE&G's plants on the construction schedule (Tr. page 134, ll. 4-25; page 136, ll. 20-23). As of the hearing in this docket, SCE&G had expended approximately \$850 million in the construction of these plants. Mr. Byrne testified that he anticipated SCE&G to have incurred as much as \$1.4 billion in construction costs by the time it anticipates receiving its COL (Tr. Page 137, ll. 4-16). Mr. Byrne testified that he does not anticipate the recent events in Japan to have any impact on licensing for the Westinghouse AP-

1000 nuclear generators (Tr. page 135, ll. 1-5). The Commission can determine for its own purposes if the recent events in Japan have increased the uncertainty in the licensing process for SCE&G's nuclear plants. However, if the Commission were to determine that these owners' costs were prudent under the Base Load Review Act and authorized the costs to be placed in rates, the cost to SCE&G's ratepayers would continue to increase for nuclear generating plants with an increasingly uncertain future and whose usefulness to the ratepayer may prove to be elusive.

Thirty months after the issuance of its Base Load Review Order, SCE&G seeks to increase its authorized owner's costs of \$286 million by an additional \$145 million – a 50 % increase. SCE&G's high level estimates of its owner's costs in its 2008 Base Load Review docket weren't even close to the actual costs apparently necessary for the construction of its nuclear generating plants. To borrow a phrase from Ms. Walker, the Base Load Review Act does place the cart before horse in that the Act authorizes the Commission to determine that a utility's decision to construct a nuclear plant is prudent *prior* to the construction of the nuclear plant and its capital costs are placed in rates as revised rates during the construction of the plant *prior* to the plant's becoming operational. §§58-33-270(A)(1), 58-33-275.

For these reasons the Base Load Review Act protects SCE&G's rate payers from imprudent capital costs. Because these owners' costs could have been anticipated at the time of SCE&G's Base Load Review Application 30 months ago, they are imprudent as defined by the Base Load Review Act. Accordingly, SCE&G's petition to include these owners' costs as capital costs under its Base Load Review Order should be denied.

CERTIFICATE OF SERVICE

The undersigned employee of Elliott & Elliott, P.A. does hereby certify that (s)he has served below listed parties with a copy of the pleading(s) indicated below by mailing a copy of same to them in the United States mail, by regular mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

RE: South Carolina Electric & Gas Company - Petition of South Carolina Electric & Gas Company for Updates and Revisions to Schedules Related to the Construction of a Nuclear Base Load Generation Facility at Jenkinsville, South Carolina

Docket No.: 2010-376-E

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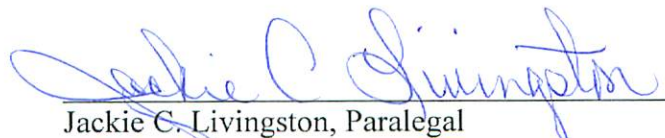
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PLEADING: MEMORANDUM

April 25, 2011

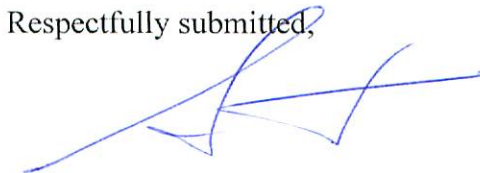

Jackie C. Livingston, Paralegal

CONCLUSION

Based on the foregoing, the South Carolina Energy Users Committee submits as follows:

1. That all contingency costs including contingency costs adjusted for inflation be removed from SCE&G's Base Load Review Order;
2. That the South Carolina Energy Users Committee has no objection to the change orders set out in SCE&G Exhibit SAB-2;
3. That the Commission deny SCE&G's petition to amend its Base Load Review Order to include approximately \$145 million in owner's costs as capital costs in SCE&G's Base Load Review Order; and
4. That the Commission deny SCE&G's petition to amend its Base Load Review Order to include approximately \$13 Million in switchyard redesign costs as capital costs in SCE&G's Base Load Review Order.

Respectfully submitted,



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PLEADING: BRIEF

April 25, 2011


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